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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH BENJAMIN MAYFIELD,

Defendant and Appellant.

E046139

(Super.Ct.No. RIF141640)

OPINION

APPEAL from the Superior Court of Riverside County. Craig G. Riemer, Judge.

Affirmed as modified.

Allison H. Ting, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, and Gary W. Schons, Assistant Attorney General, for Plaintiff and Respondent.

Pursuant to a plea bargain, defendant and appellant Joseph Benjamin Mayfield pled guilty to willful infliction of corporal injury on a cohabitant. (Pen. Code, § 273.5, subd. (a).) In accordance with the plea bargain, the court granted defendant three years'

probation with the condition that he serve 120 days in jail on weekends. Defendant contends that two conditions of his probation are unconstitutionally vague and overbroad. The People agree. We modify the disputed probation conditions and otherwise affirm.

### FACTS

On May 17, 2007, defendant struck his then girlfriend (the victim). At the trial court, both parties agreed a “no negative contact” probation condition with regards to the victim would be appropriate, which the court imposed as condition No. 9 requiring that defendant “[n]ot have any negative contact with [the victim].” The trial court also imposed as condition No. 10 that defendant “[n]ot associate with any unrelated person on probation or parole.”

### ANALYSIS

#### 1. No Association with Unrelated Persons on Probation or Parole

Defendant contends condition No. 10 of his probation should be modified to include a knowledge requirement. The People agree on the basis that condition No. 10 is unconstitutionally vague and overbroad. We agree that the condition is unconstitutionally overbroad because it does not include the element of knowledge.

“A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.)

Requiring defendant to refrain from associating with people on parole and probation infringes on defendant's constitutional right of freedom of association. (U.S. Const., 1st Amend.; see also *People v. Garcia* (1993) 19 Cal.App.4th 97, 101-102.) Consequently, the condition must be narrowly tailored. The state interest for which the condition must be narrowly tailored is defendant's rehabilitation. (*People v. Hackler* (1993) 13 Cal.App.4th 1049, 1058.) The state's interest in defendant's rehabilitation would not be served by punishing defendant for associating with people who, unknown to defendant, are on probation or parole. Thus, condition No. 10 should be modified to include a knowledge requirement.

Although not addressed by the parties, we note that defendant was required to participate in a domestic violence program as part of probation condition No. 8. Such a program is likely to include probationers or parolees. Accordingly, to avoid causing defendant to be in technical violation of condition No. 10 through his fulfillment of condition No. 8, condition No. 10 should be further modified so that it is narrowly drawn to focus on prohibiting his association with probationers and parolees outside of a rehabilitative environment.

We conclude that the probation condition must be modified to reflect that defendant must not associate with persons whom he knows to be probationers or parolees, other than relatives, or while participating in rehabilitative programs required by other conditions of his probation.

## 2. No Negative Contact

Defendant contends, and the People agree, that condition No. 9 of his probation is unconstitutionally vague and overbroad. Both defendant and the People assert that it is unclear what is meant by “negative.” Defendant suggests the condition be modified “to inform [defendant] of certain types of behavior that could cause him to be found in violation of the order, e.g., not to harass, annoy, molest, threaten, injure, intimidate, attack, batter, assault, stalk, destroy the personal property of, disturb the peace of, or block the movements of [the victim].” The People suggest we remand to the trial court so that they can impose a condition that “passes constitutional muster.” We agree that the condition is vague.

“A probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.]” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) The “no negative contact” condition of defendant’s probation is similar to an order for “no negative contact,” which is an order commonly used in criminal courts as a tool for protecting victims. “No negative contact” orders are similar to stay away orders, but are not as severe because they allow the victim and the defendant to have peaceful contact. Generally, when a court makes a “no negative contact” order, it informs the defendant of certain types of behavior that would cause a defendant to be found in violation of the order, such as those suggested by defendant. We conclude that by including examples of “negative contact” this probation condition will be rendered constitutional by providing defendant with notice

of what is required of him. Accordingly, we will modify defendant's probation condition to clarify what type of behavior is included in the term "negative contact."

DISPOSITION

Condition No. 10 of defendant's probation is modified to read: "Not associate with any unrelated person who defendant knows to be on probation or parole, other than while participating in a rehabilitative program required by another condition of probation."

Condition No. 9 of defendant's probation is modified to read: "Not have any negative contact with the victim, which includes not harassing, annoying, molesting, threatening, injuring, intimidating, attacking, battering, assaulting, stalking, destroying the personal property of, unlawfully taking the personal property of, disturbing the peace of, or blocking the movements of the victim."

In all other respects, the judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

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GAUT  
J.

\_\_\_\_\_  
KING  
J.